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**Media Inquiries:** [Judy Pino](mailto:Judy.Pino@ncla.org), 202-869-5218

## **NCLA Will Appeal Trial Judge’s Flawed Ruling that Bump Stocks Are “Machineguns” to Fifth Circuit**

*Michael Cargill v. William Barr, et al.*

**Washington, DC (November 25, 2020)** – The U.S. District Court for the Western District of Texas rendered a decision on Tuesday in the case of *Michael Cargill v. William Barr, et al.*, concluding that NCLA client Michael Cargill of Austin, Texas is not entitled to legally possess a bump stock because bump stocks have always been “machineguns” under federal law. NCLA is seeking to overturn the federal ban on bump stocks issued Dec. 26, 2018 by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and to halt its enforcement, because NCLA believes federal agencies do not have the power to alter federal statutes. NCLA believes that if the federal government wants to outlaw bump stocks, Congress has to do it.

In its ruling the court found that even without reliance on *Chevron* judicial deference, the “Defendants’ interpretations of the terms ‘single function of the trigger’ and ‘automatically’ in the statutory definition of ‘machinegun’ properly include bump stocks within that definition.” The court reached the conclusion that the statutory language is not vague or ambiguous, even though ATF itself interpreted the language completely differently for well over a decade. In 2010 the ATF conducted a physical examination and test-fire of the Slide Fire bump stock and determined that it “was not regulated as a firearm under the Gun Control Act or the National Firearms Act.” But after the tragic massacre in Las Vegas, Nevada in October of 2017, ATF contradicted its own prior interpretation of the law and disregarded its substantive expertise in the mechanics and operation of firearms in order to alter federal criminal law and ban bump stocks. Because the court decided that the statute is clear, it also refused to apply the rule of lenity in favor of Mr. Cargill.

The Court also held that the Final Rule, which turned an estimated 520,000 bump stock owners around the country into felons overnight, is a “validly issued legislative rule” that does not violate principles of non-delegation or separation of powers. Even the government admitted that the rule was not a legislative rule. NCLA contends that allowing ATF to criminalize bump stocks with its Final Rule exceeds both core constitutional limits on Congress’s ability to delegate legislative power and violates the separation of powers. Because it involves determining the scope of criminal liability, NCLA argues that only Congress could ban the possession of bump stock devices. ATF’s purported exercise of that authority is therefore unconstitutional.

NCLA will appeal the decision in the *Cargill* case to the U.S. Court of Appeals for the Fifth Circuit. In a related challenge brought by NCLA on behalf of W. Clark Aposhian of Salt Lake City, Utah, the U.S. Court of Appeals for the Tenth Circuit vacated an earlier panel decision on September 4, 2020, and granted NCLA’s petition for rehearing *en banc*. NCLA will file a reply in the *Aposhian* case on Thursday, December 5<sup>th</sup>.

**NCLA released the following statement:**

“The court’s decision rests on the dubious conclusion that bump stocks have always been prohibited, even though ATF’s official stance for years was that these devices are not machineguns. No other court in the country has accepted the government’s argument to that effect. We look forward to the Fifth Circuit Court of Appeals swiftly reversing this decision.”

– Caleb Kruckenberg, NCLA Litigation Counsel

**For more information visit the case page [here](#).**

**ABOUT NCLA**

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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